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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,438	08/31/2001	Dimitris Nakos	50277-1787	3935

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HICKMAN PALERMO TRUONG & BECKER, LLP
1600 WILLOW STREET
SAN JOSE, CA 95125

EXAMINER

ALAM, HOSAIN T

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 04/15/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/945,438

Applicant(s)

NAKOS ET AL.

Examiner

Hosain T Alam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This Office Action is in response to the amendment filed in Paper No. 7. Claims 1-9 are pending in this Office Action.

Drawings

Applicants have filed new drawing in Paper No. 8.

Response to Arguments

Applicant's arguments with respect to claims have been fully considered but are not persuasive. The reasons are set forth below.

Applicants argue

Argument 1: The invention as claimed is an integrated management tool/console and is different from the ones in the prior art. See page 2.

Argument 2: Immon's centralized repository and metadata stored in the repository, as described in col. 5, lines 42-45, col. 6, lines 57-60, and col. 9, lines 19-21 of the Immon patent) are merely descriptive and are unrelated to the tools they manage. See page 3, lines 13-17.

In response:

Claims are given broadest reasonable interpretation: MPEP 2111 states that during patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces

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the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA1969)

In accordance with MPEP 2111 the Applicants do not claim what they have argued: Claim 1 is directed to an integrated management console that is configured to manage two of the following four computing system components: a database application layer, a database server layer, an operating system layer, and a hardware layer. Claim 1 does not clearly point out as to which two of the four computing system layers are being managed. **The claim indicates that parameters are being configured but does not clearly point out as to what computing system level the parameters belong to.**

To implement the invention as recited in claim 1, one might choose a database application layer and a database server layer, and would not have to be concerned about the operating system layer, and the hardware layer. How would the selection of these two layers address the issue cost/overhead generated by operating system calls required for massive I/O operations for a OLTP system? The claim language merely recites an integrated management but does not identify what is being managed. In other words, the claim does not point out what specific computing system level the manageable parameters belong to wherein the levels are: a database application layer level, a database server layer level, an operating system layer level, or a hardware layer level.

Immon meets the requirement of generalized management as claimed since no specific computing system level has been identified in the claims.

In response to applicant's argument that Immon does not teach an integrated console/tool, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In this instance, the claim does not clearly point out as to what specific computing system level (i.e., a database application layer level, a database server layer level, an operating system layer level, or a hardware layer level), the parameters are being managed.

In response to argument 2, the Applicants relied on the following sections:

"The records that exist under the control of the server are of two general types--technical and business. **Technical metadata includes a wide variety of descriptive information such as table and attribute description, table relationships, network descriptions, and so forth.** Business metadata includes such things as subject area descriptions, business definitions, organization descriptions, and so forth. The actual database is controlled by the DBMS that is housed in the server. The database can be a standard DBMS such as DB2, Oracle, Informix, Sybase, SQL Server, etc.

Even if the claims identify two specific layers, the examiner respectfully submits that the metadata in Immon is not merely descriptive but is being used in configuring at least two computing system level in the following section, which the Applicants have failed to appreciate (see col. 6, line 66 through col. 7, line 22):

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There is another usage of distributed metadata that may be confused with distributed metadata under a system of record and that case is the usage of distributed metadata during token based distributed management of deadlock. These two cases will be referred as deadlock metadata and system of record metadata for the purposes of the ensuing discussion. There are some significant differences in the environment, intent, and composition of deadlock metadata and system of record metadata. These differences are as follows:

(1) Deadlock metadata is system specific control data **for the purpose of managing one aspect of transaction processing** (this implies that Immon is aware of I/O cost of OLTP); system of record metadata is metadata that controls enterprise access and **analysis of data** (this implies that Immon is also aware of processing in a data warehouse or DSS).

(2) Deadlock metadata exists for the purpose of controlling system performance; system of record metadata exists for the purpose of managing access and analysis of the metadata.

(3) Deadlock metadata operates under servers that execute under the same operating system; system of record metadata operates across any operating system.

(4) Deadlock metadata operates under servers that execute under the same DBMS; system of record metadata operates across any Database Management System (DBMS).

In view of the above, the examiner, the Applicants did not fully appreciate the teachings of the Immon reference and thus failed to locate pertinent teachings.

As to Claims 2-9, Applicants have not provided separate arguments but relied on the same rationale given to claim 1. In accordance with 37 CFR § 1.192(c) "[m]erely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable."

Therefore the arguments presented are not persuasive

Claims 1-4, and 6-9 are rejected under 35 U.S.C. 102(e) as being anticipated by U. S. Patent No. 6,240,416 issued to Immon et al ("Immon").

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Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Immon.

The rejection set forth in Paper No. 6 is hereby incorporated by reference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hosain T Alam whose telephone number is (703) 308-6662. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Y Vu can be reached on (703) 305-4393. The fax phone numbers for

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the organization where this application or proceeding is assigned are (703) 308-6606 for regular communications and (703) 308-6606 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305 3800.

The following contact numbers may also be used:

TC 2100 After Finals number is 703-746-7238

TC 2100 Official Fax number is 703-746-7239

TC 2100 Customer Service Center is 703-746-7240



Hosain T Alam
Primary Examiner
Art Unit 2172

April 11, 2003